

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Genevieve Lamont	Team: Squad #8	CCRB Case #: 201900958	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 01/30/2019 10:50 PM	Location of Incident: Manhattan Avenue and Grand Street	Precinct: 90	18 Mo. SOL 7/30/2020	EO SOL 3/16/2021	
Date/Time CV Reported Thu, 01/31/2019 11:05 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Thu, 01/31/2019 11:05 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Ever Cruz	09420	961712	090 PCT
2. LT Timothy Fox	00000	944571	090 PCT

Officer(s)	Allegation	Investigator Recommendation
A.LT Timothy Fox	Abuse: Lieutenant Timothy Fox stopped the vehicle in which § 87(2)(b) was an occupant.	
B.POM Ever Cruz	Abuse: Police Officer Ever Cruz stopped the vehicle in which § 87(2)(b) was an occupant.	
C.LT Timothy Fox	Abuse: Lieutenant Timothy Fox failed to provide § 87(2)(b) with a business card.	
D.POM Ever Cruz	Abuse: Police Officer Ever Cruz failed to provide § 87(2)(b) with a business card.	
E.POM Ever Cruz	Abuse: Police Officer Ever Cruz threatened § 87(2)(b) with the use of force.	

## Case Summary

On January 31, 2019, § 87(2)(b) filed the following complaint with CCRB online.

On January 30, 2019, at approximately 10:50 p.m., § 87(2)(b) was stopped at a red light at the intersection of Grand Street and Manhattan Avenue in Brooklyn. § 87(2)(b) then went to park his car in an open parking spot and as he was backing up to park, a police vehicle pulled in behind him at an angle and turned on its lights, pulling him over (**Allegation A and B: Abuse of Authority**; § 87(2)(g) § 87(2)(b) then moved around the corner onto Manhattan Avenue and the police vehicle followed.

PO Ever Cruz of the 90<sup>th</sup> Precinct approached § 87(2)(b)'s driver window and Lt. Timothy Fox, also of the 90<sup>th</sup> Precinct, approached the passenger window. § 87(2)(b) handed PO Cruz his license and registration and asked for the officer's business cards, which they ignored (**Allegation C: Abuse of Authority**; § 87(2)(g) **Allegation D: Abuse of Authority**; § 87(2)(g) Lt. Fox then directed PO Cruz to have § 87(2)(b) exit the vehicle. PO Cruz opened § 87(2)(b)'s door and § 87(2)(b) responded that he was not going to exit the car. PO Cruz then allegedly responded, "Get out of the car before I make you get out of the car" (**Allegation E: Abuse of Authority**; § 87(2)(g) § 87(2)(b) then exited the car. No arrest was made or summons issued as a result of this incident.

Dash camera footage of the incident was provided to the investigation by § 87(2)(b) [BR 01 through 05]. Body-camera footage from Lt. Fox and PO Cruz was obtained by the investigation [BR 06 and 07, respectively].

## Findings and Recommendations

**Allegation A – Lieutenant Timothy Fox stopped the vehicle in which § 87(2)(b) was an occupant.**

**Allegation B – Police Officer Ever Cruz stopped the vehicle in which § 87(2)(b) was an occupant.**

It is undisputed that Lt. Fox and PO Cruz stopped § 87(2)(b) on Manhattan Avenue and Grand Street. It is also undisputed that § 87(2)(b) was in the bicycle lane, for which Lt. Fox and § 87(2)(b) cited as the reason for the stop.

On February 6, 2019, § 87(2)(b) was interviewed at the CCRB [BR 08]. § 87(2)(b) stated that when he made eye contact with PO Cruz, he suspected that they were going to pull him over. He then attempted to park in order to observe what the police vehicle was going to do. During his conversation with PO Cruz outside of his car, PO Cruz told § 87(2)(b) that his out-of-state plates and his scratched bumper "fit". § 87(2)(b) asked him "Fits what? A criminal?", to which PO Cruz responded, "I didn't say that." § 87(2)(b) stated that no other reason was provided by PO Cruz or Lt. Fox as to why he was stopped.

On March 5, 2019, Lt. Fox was interviewed at the CCRB [BR 09]. Lt. Fox first noticed § 87(2)(b) on Grand Street, parked at a red light in the vehicular lane. § 87(2)(b) continued to stare at them and then stare away, which led Lt. Fox to believe that he was nervous and raised his suspicion. Lt. Fox also observed that his bumper had a lot of scratches on it, as if it had been in an accident. PO Cruz then conducted a U-turn. Lt. Fox could not remember if he directed him to do this. § 87(2)(b) then pulled into the bicycle lane. There was a pavement marking designating it as a bicycle lane. He remained there for approximately 20 seconds and straddled the vehicular lane

and the bicycle lane. PO Cruz pulled up behind § 87(2)(b) and turned on the lights, initiating a car stop. Lt. Fox did not explain the reason for the stop to § 87(2)(b) during the stop.

On February 28, 2019, PO Cruz was interviewed at the CCRB [BR 10]. He observed § 87(2)(b) parked in the bicycle lane for about a minute. § 87(2)(b) was not preparing to turn. PO Cruz stated that nothing else drew his attention to § 87(2)(b) aside from being parked in the bicycle lane. § 87(2)(b)'s bumper was scratched up and was not properly fixed to the car, which led PO Cruz to suspect that the plate was forged based upon his auto-crime training. PO Cruz then turned on his lights and pulled § 87(2)(b) over. When § 87(2)(b) was outside the car, PO Cruz explained to him that no parking is allowed in the bicycle lane, which is why they pulled him over. He stated that he and Lt. Fox decided not to issue § 87(2)(b) a summons, as they had explained the reason for the stop.

Dash camera footage from § 87(2)(b) and body-worn camera footage from Lt. Fox and PO Cruz shows that § 87(2)(b) did pull into the bicycle lane. Dash camera footage provided by § 87(2)(b) shows that § 87(2)(b) pulled into the bicycle lane and was backing up when Lt. Fox and PO Cruz turned on their lights [BR 01]. The dash camera footage shows that § 87(2)(b) was only in the bicycle lane for a couple of seconds, rather than for the length of time that Lt. Fox and PO Cruz stated. Both Lt. Fox and PO Cruz's BWC footage opens with them pulling behind § 87(2)(b) in the bicycle lane [BR 06 and BR 07, respectively].

According to the New York City Rules §4-08(e)(9), no person shall stop, stand, or park a vehicle within a designated bicycle lane, unless otherwise indicated by posted signs, marking or other traffic control devices, or at the direction of a law enforcement officer [BR 11].

§ 87(2)(b), § 87(2)(g)

**Allegation C – Lieutenant Timothy Fox failed to provide § 87(2)(b) with a business card.**  
**Allegation D – Police Officer Ever Cruz failed to provide § 87(2)(b) with a business card**

It is undisputed that neither Lt. Fox and PO Cruz provided § 87(2)(b) with their business card when it was requested.

§ 87(2)(b) first requested PO Cruz's card and PO Cruz told him that he did not have cards. § 87(2)(b) then asked Lt. Fox for his business card. Lt. Fox then directed PO Cruz to have § 87(2)(b) step out of the vehicle. While Lt. Fox was running his license plate, § 87(2)(b) got a pen from his car and informed PO Cruz that he was going to write down his information. PO Cruz's name and shield number was hidden by his jacket and § 87(2)(b) was only able to see his information when his jacket moved slightly to the side. PO Cruz did not move aside his jacket. He did not verbalize his information to § 87(2)(b). When Lt. Fox returned from running his license, he told § 87(2)(b) that he could meet him at the 90<sup>th</sup> Precinct if he wanted to have a conversation. Lt. Fox then moved his jacket to show his name, and § 87(2)(b) wrote it down. He did not verbalize his name to § 87(2)(b).

PO Cruz stated that § 87(2)(b) asked for his business card as soon as he rolled down the window. He responded that he needed his license and registration first. Once § 87(2)(b) was outside of the car, PO Cruz stated his name, shield, and rank as § 87(2)(b) wrote down his information. PO Cruz stated that, based upon his knowledge of the Right to Know Act, he does not need to provide a business card during a lawful car stop. PO Cruz is equipped with business cards, but did not remember if he had them on his person during the incident.

Lt. Fox stated that § 87(2)(b) asked for both his and § 87(2)(b)'s business cards before he had produced his license and registration. He stated that they ignored his request, as ensuring that § 87(2)(b) complied with PO Cruz was a primary concern and the business cards were secondary, and later forgot the request. He also stated that it is not standard procedure to provide business cards during a vehicle stop. Lt. Fox provided § 87(2)(b) with his name before he asked for it, due to § 87(2)(b) becoming combative. This led Lt. Fox to believe that § 87(2)(b) was going to file a complaint against him. After he had verified his license, § 87(2)(b) informed Lt. Fox that he was going to write down their information, which he then did. It appeared to Lt. Fox that § 87(2)(b) wrote down his and PO Cruz's name.

Footage from PO Cruz's BWC shows § 87(2)(b) requesting PO Cruz's business card. PO Cruz responds, "You can get my information right here", pointing towards his chest. PO Cruz does not tell § 87(2)(b) that he does not have his business cards. After § 87(2)(b) stepped out of the car, PO Cruz told his name and command to § 87(2)(b) but his back was facing away from § 87(2)(b) while he did so and § 87(2)(b) did not have anything to write his information down on. § 87(2)(b) obtained a piece of paper after this, and proceeded to write down PO Cruz's information, however PO Cruz did not verbalize his information to § 87(2)(b) as he was writing [BR 07].

Footage from Lt. Fox's BWC showed § 87(2)(b) requesting a card from Lt. Fox. Lt. Fox responded that he did not have a card and then directed PO Cruz to have § 87(2)(b) exit the vehicle. At the end of the encounter, Lt. Fox provided his name, commands, and work hours to § 87(2)(b) who then writes it down [BR 06].

According to Patrol Guide Procedure 203-09, a business card is to be offered for law enforcement activity, except in cases when a summons is issued or an arrest made, as follows... for a stop where an officer has an individualized, reasonable suspicion that the person stopped has committed, is committing, or is about to commit a crime where a reasonable person would not feel free to end the encounter. Patrol Guide Procedure 203-09 further states that, should an officer's supply of business cards be depleted, the officer must allow the member of the public ample time to write down identification information [BR 12].

§ 87(2)(b), § 87(2)(i)

§ 87(2)(b), § 87(2)(g)

**Allegation E – Police Officer Ever Cruz threatened § 87(2)(b) with the use of force.**

It is undisputed that PO Cruz told § 87(2)(b) that if he did not identify himself then he would be removed from the vehicle. PO Cruz’s BWC footage shows him informing § 87(2)(b) that he would take him out of the car for failing to identify himself.

§ 87(2)(b) acknowledged that he did not roll down his windows when PO Cruz first approached him and that PO Cruz knocked on his window two times before he rolled down the windows. He also acknowledged that he did not provide his license the first two times PO Cruz asked him. After § 87(2)(b) handed his license to PO Cruz through the window, he asked for the officer’s business cards. PO Cruz informed him that they did not have cards and Lt. Fox directed PO Cruz to have § 87(2)(b) step out of the car. PO Cruz then opened the door and § 87(2)(b) told him that he was not getting out of the car. PO Cruz responded, “Get out of the car before I make you get out of the car.”

PO Cruz also testified that that he tapped twice on § 87(2)(b)’s window before he rolled it down. § 87(2)(b) informed him that he was looking for his registration, to which PO Cruz responded that he wanted his license first. Lt. Fox then directed PO Cruz to have § 87(2)(b) step out of the vehicle, as he refused to identify himself. PO Cruz opened the car door and § 87(2)(b) exited willingly.

Lt. Fox stated that after § 87(2)(b) and PO Cruz had been speaking for about a minute, he walked around the driver side of the car and directed § 87(2)(b) to exit the vehicle. He stated that this was because it appeared to him that § 87(2)(b) was not cooperating with PO Cruz. He did not recall if § 87(2)(b) immediately exited the car.

BWC footage from PO Cruz shows he requested that § 87(2)(b) provide his license, or else he would be taken out of the car for failure to identify himself. The footage also shows PO Cruz open § 87(2)(b)’s door at Lt. Fox’s direction and tells him to step out. § 87(2)(b) refuses twice before stepping out [BR 07].

According to *People v. Forbes*, “upon making a valid stop of a motor vehicle for a traffic violation, the police may order the driver and all passengers out of the vehicle until the stop is concluded” [BR 13]. *People v. Forbes*, 283 A.D. 2d at 93.

§ 87(2)(b), § 87(2)(g)  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Civilian and Officer CCRB Histories**

- § 87(2)(b)  
[REDACTED]
- Lt. Fox has been a member of service for 11 years and has been subject to two previous CCRB complaints, neither of which were substantiated. § 87(2)(g)  
[REDACTED]  
[REDACTED]
- PO Cruz has been a member of service for two years and is a subject officer in a current CCRB case.

**Mediation, Civil and Criminal Histories**

- § 87(2)(b) declined to mediate this complaint.
- On March 11, 2019, a FOIL request was submitted to the New York City Office of the Comptroller and will be added to the case file upon receipt [BR 15].

- § 87(2)(b) [REDACTED]  
[REDACTED]  
[REDACTED]

Squad No.: \_\_\_\_\_

Investigator:	_____	_____	_____
	Signature	Print Title & Name	Date

Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date